United Nations A/68/298

General Assembly

Distr.: General
19 July 2013

Original: English

Sixty-eighth session
Agenda item 69 (b) of the provisional agenda*
Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Protecting human rights and fundamental freedoms while countering terrorism

Report of the Secretary-General

Summary

The General Assembly, in its resolution 66/171, reaffirmed that States must ensure that any measure taken to combat terrorism complies with their obligations under international law, in particular human rights, refugee and humanitarian law, and called upon States countering terrorism to fully comply with their obligations under international law. The present report is submitted pursuant to that resolution. It refers to recent developments within the United Nations system in relation to human rights and counter-terrorism, including in support of the implementation of the United Nations Global Counter-Terrorism Strategy, notably through the activities of the Counter-Terrorism Implementation Task Force, in particular its Working Group on Protecting Human Rights while Countering Terrorism; the Counter-Terrorism Committee Executive Directorate; the Human Rights Council, its various special procedures and the universal periodic review; the United Nations human rights treaty bodies; and the Office of the United Nations High Commissioner for Human Rights.

* A/68/150.

13-42303 (E) 280813

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I. Introduction

1. In its resolution 66/171 of 19 December 2011, the General Assembly reaffirmed that States must ensure that any measure taken to combat terrorism complies with their obligations under international law, in particular human rights, refugee and humanitarian law, and urged States countering terrorism to fully comply with their obligations under international law. It welcomed the work of the United Nations High Commissioner for Human Rights to implement the mandate given to her in 2005, by Assembly resolution 60/158, and requested the High Commissioner to continue her efforts in that regard; took note with appreciation of the report of the Secretary-General on protecting human rights and fundamental freedoms while countering terrorism (A/66/204); and requested the Secretary-General to submit a report on the implementation of the resolution to the Human Rights Council and to the Assembly at its sixty-eighth session.

2. In that resolution the General Assembly also encouraged the Security Council and its Counter-Terrorism Committee to strengthen the links, cooperation and dialogue with relevant human rights bodies, in particular with the Office of the United Nations High Commissioner for Human Rights (OHCHR), the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, other relevant special procedures and mechanisms of the Human Rights Council, and relevant treaty bodies, giving due regard to the promotion and protection of human rights and the rule of law in their ongoing work relating to counter-terrorism.

3. Through the adoption of resolution 66/282 of 29 June 2012, the General Assembly concluded its third biennial review of the United Nations Global Counter-Terrorism Strategy (resolution 60/288, annex). In its resolution 66/282 the Assembly emphasized the importance of an integrated and balanced implementation of all four pillars[1] of the Strategy. The Assembly also reasserted the fundamental role of the promotion and protection of human rights and fundamental freedoms, as reflected in pillar IV, in the implementation of all pillars of the Strategy. Through a statement by its President on 15 January 2013 (S/PRST/2013/1), the Security Council also reaffirmed that counter-terrorism measures taken by States must comply with all their obligations under international law, including human rights law, and underscored that "effective counter-terrorism measures and respect for human rights, fundamental freedoms and the rule of law are complementary and mutually reinforcing, and are an essential part of a successful counter-terrorism effort.

4. The present report responds to the request of the General Assembly in its resolution 66/171, as well as to the request of the former Commission on Human Rights, for the High Commissioner to report to the General Assembly on the implementation of Commission resolution 2005/80. The report refers to recent developments within the United Nations system in relation to human rights and counter-terrorism, including in support of the implementation of the United Nations

[1] Pillar I, "Measures to address the conditions conducive to the spread of terrorism"; Pillar II, "Measures to prevent and combat terrorism"; Pillar III, "Measures to build States' capacity to prevent and combat terrorism and to strengthen the role of the United Nations system in this regard"; and Pillar IV, "Measures to ensure respect for human rights for all and the rule of law as the fundamental basis of the fight against terrorism".

Global Counter-Terrorism Strategy. This includes the activities of the Counter-Terrorism Implementation Task Force, in particular its Working Group on Protecting Human Rights while Countering Terrorism; the Counter-Terrorism Committee Executive Directorate; the Human Rights Council, its various special procedures and the universal periodic review; the United Nations human rights treaty bodies; and OHCHR.

II. Recent United Nations developments in the in the area of human rights and counter-terrorism

A. United Nations Global Counter-Terrorism Strategy and the Counter-Terrorism Implementation Task Force

5. The Counter-Terrorism Implementation Task Force Working Group on Protecting Human Rights while Countering Terrorism, led by OHCHR,[2] continues to assist States in implementing the human rights aspects of the United Nations Global Counter-Terrorism Strategy, in particular those contained in pillar IV, entitled "Measures to ensure respect for human rights for all and the rule of law as the fundamental basis of the fight against terrorism". An overview of the activities of the Counter-Terrorism Implementation Task Force and its Working Groups is contained in the report of the Secretary-General on the activities of the United Nations system in implementing the Strategy (A/66/762).

6. As Chair of the Counter-Terrorism Implementation Task Force Working Group on Protecting Human Rights while Countering Terrorism, OHCHR has continued to promote respect for and compliance with human rights and the rule of law as part of effective counter-terrorism strategies; support the exchange of best practices to promote and protect human rights, fundamental freedoms and the rule of law in all aspects of counter-terrorism;[3] and assist States in the implementation of the human rights aspects of the United Nations Global Counter-Terrorism Strategy,[4] in particular those reflected in pillar IV. In line with the emphasis of Member States on the importance of an integrated and balanced implementation of all pillars of the Strategy,[5] OHCHR has increasingly highlighted the preventive aspects of counter-terrorism measures that are in compliance with human rights and the rule of law, as well as the linkages between "measures to address the conditions conducive to the spread of terrorism", as reflected in pillar I of the Strategy, and "measures to

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[2] Other members include the Counter-Terrorism Committee Executive Directorate, the International Maritime Organization, the International Criminal Police Organization (INTERPOL), the Analytical Support and Sanctions Implementation Monitoring Team concerning Al-Qaida and the Taliban and associated individuals and entities, the Office of Legal Affairs, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, the United Nations Interregional Crime and Justice Research Institute and the United Nations Office on Drugs and Crime. The International Committee of the Red Cross, the United Nations Office for the Coordination of Humanitarian Affairs and the Office of the United Nations High Commissioner for Refugees participate as observers.

[3] See General Assembly resolution 66/171, para. 13.

[4] See General Assembly resolution 60/288, annex.

[5] General Assembly resolution 66/282, paras. 2 and 6.

ensure respect for human rights for all and the rule of law as the fundamental basis of the fight against terrorism" as reflected in pillar IV.[5]

7. Under the leadership of OHCHR, the Working Group has been implementing a major long-term project with global reach on training and capacity-building for law enforcement officials on human rights, the rule of law and prevention of terrorism, with the support of Denmark, Switzerland and the United States of America. The objective of the project is to provide training and technical assistance to States in order to enhance their knowledge, understanding and implementation of the international human rights framework and the rule of law in the counter-terrorism field. The project will improve States' capacity to prevent, respond to and investigate terrorism threats and support their efforts to implement measures included in pillar IV of the Strategy. The project, by offering participating States access to human rights training, information and expertise on emerging best counter-terrorism practices, is aimed at encouraging operational police and security officials to embed respect for international human rights norms and rule of law standards in their counter-terrorism programming and to increase cross-border and regional cooperation in this field.

8. The project was launched in April 2013 at a workshop in Amman, the purpose of which was to begin mapping the training needs of States, to raise awareness of the project among experts and State representatives and to establish a roster of experts that could assist in developing the training curricula for the project. Participants included senior police and security officials and other high-level representatives from Burkina Faso, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Mali, Nigeria, Qatar, Tunisia, the United Arab Emirates and Yemen. Belgium, Brazil, Canada, Denmark, France, the Netherlands, the Russian Federation, Spain, and the United States of America, as well as the European External Action Service, participated as observers. Participants also included international human rights law experts, investigators, trial attorneys counter-terrorism officials and experts, civil society representatives, academics, members of the Counter-Terrorism Implementation Task Force and experts from other international organizations.

9. The workshop focused on mapping current training needs. There were substantive sessions on international human rights law and current best-practice standards in the areas of investigative interviewing, the use of special investigation techniques, countering violent extremism, detention regimes and community policing. As a result of the workshop, several Member States, including Burkina Faso, Egypt, Mali, Nigeria, Tunisia and Yemen, expressed interest in requesting training under the project after the second key needs-assessment and training best-practices workshop has taken place, the training modules have been developed and the roster of experts has been established. Those experts will provide technical assistance and follow a training-the-trainers approach to ensure the sustainability and long-term impact of the project.

10. In connection with that project, the Working Group on Protecting Human Rights while Countering Terrorism was represented at a number of events, including a seminar on the topic "Bringing terrorists to justice: policy challenges in the prosecution and prevention of terrorism", organized by the Counter-Terrorism Committee Executive Directorate and held in Dar es Salaam, United Republic of Tanzania, from 26 to 28 February 2013; a peer-review meeting on community policing organized by the Organization for Security and Co-operation in Europe

(OSCE) and held in Warsaw on 6 and 7 March 2013; a workshop on community policing organized by the Global Counter-Terrorism Forum (GCTF) and held in Washington, D.C., on 21 and 22 March 2013; and a seminar on the topic "Proactive investigative counter-terrorism good practice in the criminal justice sector", organized by GCTF and held in Abuja on 5 and 6 June 2013.

11. The Working Group has also expanded its series of basic human rights reference guides with funding support from the United Nations Counter-Terrorism Centre.[6] Those guides are practical tools that serve as a reference to guide national action, provide checklists for national assessment processes and address capacity-building needs of States. As part of the project, the existing guides on stopping and searching of persons[7] and on security infrastructure[8] will be updated, translated and published, while further guides on detention, the proscription of organizations and the conformity of national counter-terrorism legislation with international human rights law will be developed. Building on the outcomes of the series of regional expert workshops held in 2011 and 2012 on the right to a fair trial and due process in the context of countering terrorism, the Working Group will also develop a human rights reference guide on this issue.

12. As Chair of the Working Group, OHCHR has deepened its engagement with civil society organizations and human rights defenders during the reporting period on issues related to the implementation of the human rights aspects of the Strategy, as reflected in pillars I and IV. Civil society, through initiatives at the national and international levels, is crucial to effective and sustainable counter-terrorism activities and strategies that are in compliance with human rights and the rule of law.

13. Within the framework of the Counter-Terrorism Implementation Task Force, OHCHR has continued to highlight human rights concerns and endeavoured for human rights and the principle of the rule of law to be mainstreamed through the work of the Task Force and across the activities of its working groups,[9] in line with the Strategy and General Assembly resolution 66/171. OHCHR contributed to the United Nations Counter-Terrorism Centre conference on national and regional counter-terrorism strategies in Bogota, held under the auspices of the newly established Working Group on National and Regional Counter-Terrorism Strategies on 31 January and 1 February 2013, highlighting the importance of human rights as the fundamental basis of effective national and regional counter-terrorism strategies. OHCHR contributed to the Counter-Terrorism Implementation Task Force/European Union dialogue that took place on 21 November 2012 in New York. The Assistant Secretary-General for Human Rights participated in the Counter-Terrorism Implementation Task Force coordination meeting in New York on 16 and 17 December 2012. On 8 May 2013, OHCHR participated in a meeting in New York on the practical correctional rehabilitation programme and the role of the Mohammed Bin Naif Counselling and Care Centre in Saudi Arabia in countering terrorism. On 13 June 2013, the High Commissioner delivered opening remarks at

[6] See also A/HRC/22/26, para. 12.

[7] Available from http://www.un.org/en/terrorism/ctitf/pdfs/bhrrg_stopping_searching.pdf.

[8] Available from http://www.un.org/en/terrorism/ctitf/pdfs/bhrrg_security_infrastructure.pdf.

[9] The Working Group on Supporting and Highlighting Victims of Terrorism, the Working Group on Border Management relating to Counter-Terrorism, the Working Group on Dialogue, Understanding and Countering the Appeal of Terrorism and the Working Group on National and Regional Counter-Terrorism Strategies.

the International Counter-Terrorism Focal Points Conference on Addressing Conditions Conducive to the Spread of Terrorism and Promoting Regional Cooperation, held in Geneva, organized by the Counter-Terrorism Implementation Task Force Office in partnership with the Government of Switzerland. OHCHR also contributed to a panel discussion at the conference on the role of civil society, underscoring the crucial role of civil society for effective, sustainable and human rights-compliant counter-terrorism strategies and measures.

B. Counter-Terrorism Committee Executive Directorate

14. The Counter-Terrorism Committee Executive Directorate has continued to participate actively in the Counter-Terrorism Implementation Task Force Working Group on Protecting Human Rights while Countering Terrorism, including at the workshop organized by the Working Group to launch a capacity-building project for law enforcement officials, held in Amman in April 2013. In line with resolution 66/171, the Executive Directorate has also continued to liaise and strengthen cooperation with OHCHR, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, and other human rights mechanisms and mandates, including in relation to preparation and follow-up of country visits and to the facilitation of technical assistance. The Executive Directorate continued its dialogue on relevant human rights issues with regional and subregional organizations, as well as with national and international civil society organizations. It also established an internal task force related to comprehensive and integrated national counter-terrorism strategies and has paid increased attention to addressing the conditions conducive to terrorism, all of which have important human rights dimensions. In its revised process for assessing the implementation of Security Council resolutions 1373 (2001) and 1624 (2005), the Executive Directorate has included an expanded number of human rights issues to be discussed with Member States.

15. From 18 to 20 March 2013, the Executive Directorate convened a workshop in Kathmandu for South Asian police officers, prosecutors and judges with expert-level participation from OHCHR. The workshop focused on issues related to witness protection, media and the prosecution of terrorism cases, and to enhancing the capacity of the judiciary to adjudicate terrorism cases. Similarly, OHCHR human rights experts participated in a workshop for East African law enforcement officers and prosecutors hosted by the Executive Directorate in Kampala from 7 to 9 May 2013. OHCHR contributed to two workshops on countering incitement to terrorism and enhancing cultural dialogue, pursuant to Security Council resolution 1624 (2005). The first workshop, co-organized by the Organization of Islamic Cooperation and the Executive Directorate, was held in Jeddah, Saudi Arabia, from 28 to 30 May 2013, while the second workshop, organized by the Executive Directorate, brought representatives from North African States together in Algiers from 16 to 18 June 2013. The workshops provided an opportunity for participants from various backgrounds to share experiences relating to current and potential challenges that might hamper or undermine efforts to counter incitement to terrorism and violent extremism at the national and regional levels.

C. Human Rights Council

16. In its resolution 19/19, the Human Rights Council once again called on all States to ensure that any measure taken to counter terrorism complies with international law, in particular international human rights, refugee and humanitarian law. The Council called on States, inter alia, to safeguard the right to privacy in accordance with international law and urged them to take measures to ensure that interferences with the right to privacy are regulated by law, subject to effective oversight and appropriate redress, including through judicial review or other means. It also called upon States, while countering terrorism, to ensure that any person whose human rights or fundamental freedoms have been violated has access to an effective remedy and that victims receive adequate, effective and prompt reparations where appropriate, including by bringing to justice those responsible for such violations. The Council encouraged the United Nations entities involved in supporting counter-terrorism efforts to continue to facilitate the promotion and protection of human rights and fundamental freedoms, as well as due process and the rule of law, while countering terrorism.

17. In its resolution 22/6, the Human Rights Council expressed its grave concern that, in some instances, national security and counter-terrorism legislation and other measures, such as laws regulating civil society organizations, had been misused to target human rights defenders or had hindered their work and endangered their safety in a manner contrary to international law. In paragraph 10 of that resolution, the Council called on States to ensure that measures to combat terrorism and preserve national security are in compliance with their obligations under international law, in particular under international human rights law, and do not hinder the work and safety of individuals, groups and organs of society engaged in promoting and defending human rights; clearly identify which offences qualify as terrorist acts by defining transparent and foreseeable criteria; "prohibit and do not provide for, or have the effect of, subjecting persons to arbitrary detention"; and allow appropriate access for relevant international bodies, non-governmental organizations and national human rights institutions, where such exist, to persons detained under anti-terrorism and other legislation relating to national security, and to ensure that human rights defenders are not harassed or prosecuted for providing legal assistance to persons detained and charged under legislation relating to national security.

1. Universal periodic review

18. The Human Rights Council also addressed questions related to human rights and counter-terrorism in its recommendations to States under universal periodic review. Its recommendations cited the need to ensure that all legislation, policies and measures for countering terrorism comply with States' international obligations related to international human rights law, international humanitarian law and refugee law. The importance of transparent, independent and comprehensive investigations by some States into their alleged complicity in secret detention practices and illegal renditions in the counter-terrorism context was underscored.[10] The need to ensure that detainees are held only in recognized places of detention, with regularized procedures and safeguards to protect the rights of detainees,

[10] See A/HRC/21/4, A/HRC/21/9 and A/HRC/23/5.

including access to legal representation and systematic family notification, was also highlighted.[11] Other issues of concern included the need to review legislation and policies to ensure that the legitimate activities of civil society would not be restricted as a result of counter-terrorism legislation.[12] Recommendations also referred to the importance of preventing religious profiling, as well as the need to review terrorism-related legislation and measures to ensure the effectiveness in practice of safeguards against abuse and against the deliberate targeting of certain ethnic groups.[13] It was also recommended that States commit to investigating individuals suspected of involvement in terrorism-related activities and, where sufficient evidence exists, to their prosecution in ordinary courts, in conformity with international fair trial standards.[14]

2. Special procedures

19. The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has focused in his reports on issues relating to the human rights of victims of terrorism and corresponding international obligations of States to secure those rights;[15] on the Security Council's Al-Qaida sanctions regime and its compatibility with international human rights norms, in particular the due-process deficits inherent in the sanctions regime;[16] and accountability of public officials for gross or systematic human rights violations committed while countering terrorism.[17]

20. The Special Rapporteur conducted a country visit to Burkina Faso in April 2013. At the end of his visit, the Special Rapporteur noted the importance of tools to ensure the security of a State's borders, to maintain the security of inward investment essential to its development and to address the economic, social, political and human rights concerns that can easily become conditions conducive to the spread of terrorism.[18]

21. With the support of the Counter-Terrorism Committee Executive Directorate, in June 2013, the mandate of the Special Rapporteur was represented at a stakeholders' coordination meeting in Ouagadougou. The meeting was co-organized by the Counter-Terrorism Implementation Task Force and the Executive Directorate and was convened in the context of the implementation of the Integrated Assistance for Countering Terrorism Initiative of the Counter-Terrorism Implementation Task Force. On the margins of the coordination meeting, the conclusions and recommendations reached by the Special Rapporteur in the context of his visit to Burkina Faso in April 2013 were shared with the local authorities and the donor community.

22. Since assuming his mandate in August 2011, the Special Rapporteur has also issued numerous communications and press releases, and has participated in

[11] See A/HRC/22/16.
[12] See A/HRC/21/4.
[13] See A/HRC/21/9.
[14] See A/HRC/21/9.
[15] See A/HRC/20/14.
[16] See A/67/396.
[17] See A/HRC/22/52.
[18] The Special Rapporteur's statement is available from http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13227&LangID=E.

conferences, training events and expert meetings on the promotion of human rights while countering terrorism. These have included a workshop for a high-level delegation from Iraq, in Geneva on 25 February 2013, on conflict-resolution and peacebuilding in the context of terrorist violence, and a joint hearing of the Subcommittees on Human Rights and on Security and Defence of the European Parliament on the study *Human Rights Implications of the Usage of Drones and Unmanned Robots in Warfare* on 25 April 2013 in Brussels. An overview of the Special Rapporteur's activities is reflected in his reports to the Human Rights Council[19] and to the General Assembly.[20]

23. The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, in his report to the Human Rights Council (A/HRC/19/61), noted that several national commissions of inquiry had been established to examine issues concerning State secrets and complicity in torture in the aftermath of the terrorist attacks of 11 September 2001. The Special Rapporteur observed that commissions of inquiry could constitute an important tool to investigate crimes committed in the frame of counter-terrorism operations.

24. In the course of his country visits, the Special Rapporteur has also addressed issues of torture and ill-treatment in the context of security and counter-terrorism measures. In the case of Tunisia, for example, he observed that the use of torture had intensified after the entry into force of the counter-terrorism legislation adopted on 10 December 2003.[21] He noted in that regard the ratification of several international human rights instruments, including the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Ministry of Justice's initiative to develop a draft legal framework for the harmonization of national legislation with international human rights standards, as a manifestation of good will and the commitment to reform the legal system of Tunisia. In Tajikistan, he observed that migrant workers returning from the Russian Federation, members of Islamic movements and Islamist groups or parties, and persons accused of being linked to Islamist extremists could be at particular risk of torture and ill-treatment by the Sixth Department of the State Committee for National Security under the pretext of the fight against terrorism and threats to national security.[22] In Morocco, the Special Rapporteur observed a systematic pattern of acts of torture and ill-treatment during the detention and arrest process in cases involving allegations of terrorism or threats against national security.[23]

25. The Special Rapporteur has issued numerous communications and press releases in advocating for authorities to amend their national counter-terrorism legislation and fully implement all necessary safeguards to prevent torture and ill-treatment in cases related to counter-terrorism, including the exclusion of evidence obtained under torture. On 12 April 2012, the Special Rapporteur delivered a statement to a public hearing convened by the Subcommittee on Human Rights of the European Parliament in Brussels on the topic "Secret rendition and detention practices: how to protect human rights while countering terrorism".

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[19] A/HRC/20/14, paras. 2-9 and A/HRC/22/53, paras. 2-13.

[20] A/67/396, paras. 2-11.

[21] See A/HRC/19/61/Add.1.

[22] See A/HRC/22/53/Add.1.

[23] See A/HRC/22/53/Add.2.

26. In its resolution 20/16, the Human Rights Council requested the Working Group on Arbitrary Detention to prepare draft basic principles and guidelines, for presentation to the Council in 2015, on remedies and procedures on the right of anyone deprived of his or her liberty, with the aim of assisting Member States in fulfilling their obligation to avoid arbitrary deprivation of liberty in compliance with international human rights law.

27. At its sixty-fifth session, the Working Group on Arbitrary Detention adopted its deliberation No. 9, concerning the definition and scope of arbitrary deprivation of liberty under customary international law. The Working Group found that the prohibition of all forms of arbitrary deprivation of liberty formed a part of international customary law and constituted a pre-emptory or jus cogens norm, and expressed concern at the increased reliance on administrative detention, including detention on counter-terrorism grounds. The Working Group noted, "although it is acknowledged that counter-terrorism measures might require the adoption of specific measures limiting certain guarantees, including those relating to detention and the right to a fair trial in a very limited manner, deprivation of liberty must in all circumstances remain consistent with the norms of international law. In this respect, the right of anyone deprived of his or her liberty to bring proceedings before a court in order to challenge the legality of the detention is a personal right, which must in all circumstances be guaranteed by the jurisdiction of the ordinary courts." It noted further, "counter-terrorism legislation that permits administrative detention often allows secret evidence as the basis for indefinite detention. As this would be inconsistent with the prohibition of arbitrary deprivation of liberty, no person should be deprived of liberty or kept in detention on the sole basis of evidence to which the detainee does not have the ability to respond, including in cases of immigration, terrorism-related and other subcategories of administrative detention."[24] The Working Group has also adopted a number of opinions under its individual complaints procedure that directly concerned cases of persons detained on terrorism-related charges, in which the deprivation of liberty was considered to be arbitrary.[25]

28. In the report on its mission to Pakistan, the Working Group on Enforced and Involuntary Disappearances stated its opinion that the compatibility of the Anti-Terrorism Act and of the AACP [actions in aid of civil power] Regulations with international standards should be carefully examined, given that they would appear to allow forms of arbitrary deprivation of liberty, which may create themselves the conditions for the occurrence of enforced disappearances."[26] The Working Group further acknowledged the important security challenges Pakistan is facing, including attacks by terrorist movements and violent groups. It emphasized, nonetheless, that "actions taken to deal with security threats, and in particular with terrorism, must at all times respect nationally and internationally recognized human rights."[27] The Working Group also recalled that article 7 of the Declaration on the Protection of All Persons from Enforced Disappearance stated that "no circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced disappearances."

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[24] A/HRC/22/44, paras. 37-75.

[25] See the database on case opinions and reports produced by the Working Group, available from http://www.unwgaddatabase.org/un/.

[26] A/HRC/22/45/Add.2, para. 29.

[27] Ibid., para. 90.

29. On 21 October 2011, the mandates involved in the joint study on global practices in relation to secret detention in the context of countering terrorism, including those of the Special Rapporteur on torture, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, the Working Group on Arbitrary Detention and the Working Group on Enforced or Involuntary Disappearance, addressed follow-up letters to 59 States requesting their Governments to provide an update on the implementation of the recommendations contained in the study. In its report to the Human Rights Council (A/HRC/22/44), the Working Group on Arbitrary Detention referred to its consideration of follow-up, within its mandate, to that study. In his report to the Human Rights Council, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism endorsed and strongly urged all Member States to accept and implement the recommendation made to the Council in February 2010 by that study in the context of countering terrorism.[28]

30. In her 2012 report to the General Assembly (A/67/292), the Special Rapporteur on the situation of human rights defenders assessed the impact of certain legislation, including anti-terrorism and other legislation relating to national security, on the activities of human rights defenders. The Special Rapporteur noted that in some instances the provisions outlined in anti-terrorism legislation were so broad that any peaceful act expressing views of dissent would fall under the definition of a terrorist act, or an act facilitating, supporting or promoting terrorism. She also emphasized limitations on access to legal representation for individuals prosecuted under anti-terrorism legislation, noting that such limitations had serious implications for human rights defenders providing legal assistance and working to monitor prisons and detention facilities.

31. In his report to the twenty-third session of the Human Rights Council (A/HRC/23/39), the Special Rapporteur on the rights to freedom of peaceful assembly and of association addressed concerns related to laws and practices that constrain civil society organizations from seeking, receiving or utilizing foreign funding. The Special Rapporteur noted that States had an interest in protecting national security or public safety, which could be legitimate grounds for restricting freedom of association, but he underscored that States must comply fully with the provisions of international human rights law in this regard. He expressed specific concerns about Financial Action Task Force recommendation 8 on non-profit organizations, which states that "countries should review the adequacy of laws and regulations that relate to entities that can be abused for the financing of terrorism". The Special Rapporteur underlined in paragraph 25 of his report that "very few, if any, instances of terrorism financing have been detected as a result of civil society organization-specific supervisory measures", and that it was rather financial intelligence that was essential. In his view, recommendation 8 did not adequately take into account the fact that States already have other means, such as financial surveillance and police cooperation, to effectively address the terrorism-financing threat. He noted that the Financial Action Task Force failed to provide for specific measures to protect the civil society sector from undue restrictions of the right to freedom of association by States asserting that their measures are in compliance with Task Force recommendation 8. The Special Rapporteur underscored the

[28] A/HRC/22/52, para. 50.

significant role of civil society organizations in combating terrorism, noting that unduly restrictive measures, which could lead donors to withdraw support from associations operating in difficult environments, could undermine invaluable initiatives of civil society organizations in the struggle against terrorism and extremism.

32. The Special Rapporteur on extrajudicial, summary or arbitrary executions, in his report to the General Assembly (A/67/275), addressed issues relating to restrictions on the imposition of capital punishment, in particular those issues of direct relevance to arbitrary deprivation of life, the violation of the right to a fair trial, the problem of error and the imposition of the death penalty by military courts and tribunals. The Special Rapporteur noted with concern that a few States had continued to broaden the range of offences punishable by death, including for terrorism-related offences. For instance, in 2011, a new penal law for terrorism crimes and financing of terrorism was presented for consideration in Saudi Arabia, containing 27 offences punishable by death, while in Bangladesh, a bill to amend the Anti-Terrorism Act of 2009 was adopted by the parliament in February 2012, introducing the death penalty for financing of terrorism and other offences. The Special Rapporteur has also issued a number of communications relating to questions of imposition of death penalty in counter-terrorism cases, with particular concern over the imposition of the death penalty in counter-terrorism cases in Iran (Islamic Republic of) and Iraq, in contravention of international human rights law.[29]

33. In his report on steps taken by the United States Government to implement the recommendations made by the previous mandate holder following his visit to the United States in June 2008 (A/HRC/20/22/Add.3), while noting progress in some areas, the Special Rapporteur noted that no significant improvement had been made in priority areas of concern, notably due process in the imposition of the death penalty; transparency in law enforcement, military and intelligence operations; and accountability for potentially unlawful deaths in the Government's international operations. The Special Rapporteur noted that inmates sentenced to death were still not entitled to lawyers for the critical stage of the State h beas procedure, when all claims must be raised or they will be defaulted in the Federal habeas procedure under the Antiterrorism and Death Penalty Act of 1996.

34. The Special Rapporteur also conducted a visit to India in March 2012, during which he addressed issues related to deaths resulting from the excessive use of force by security officers and relevant legislation in this regard, as well as the unlawful killings committed by various non-State actors, noting that impunity in cases of extrajudicial executions was a crucial challenge that needed to be addressed. He recommended that the practice of inviting visits by United Nations special procedures should continue, including in relation to counter-terrorism measures. In the report on his visit to Turkey (A/HRC/23/47/Add.2) in November 2012, the Special Rapporteur noted that any analysis of the human rights record of Turkey should take into account the country's challenges in fighting terrorism. However, he observed that the fight against terrorism in Turkey presented significant challenges in terms of compliance with international human rights standards and noted in particular that the legal framework for counter-terrorism operations contained serious ambiguities.

[29] See A/HRC/23/47/Add.5.

D. Human rights treaty bodies

35. The Human Rights Committee, the Committee against Torture, the Committee on the Rights of the Child, the Committee on Economic, Social and Cultural Rights and the Committee on the Elimination of Racial Discrimination continued to address the compliance of the counter-terrorism measures of States parties with obligations under the international human rights treaties.

36. One concern addressed by the Human Rights Committee, for example, has been the incompatibility of the national anti-terrorism legislation of some States parties with specific provisions of the International Covenant on Civil and Political Rights, in particular owing to vague and overly broad definitions of terrorism. Other issues of concern have included lack of safeguards related to due process and fair trial, including arbitrary arrest and indefinite detention without charge or trial; widespread use of lengthy pretrial detention, a lack of effective safeguards to challenge the lawfulness of pretrial detention and a lack of prompt access to a lawyer for detainees; restrictions on freedom of expression and opinion, particularly for human rights defenders, lawyers and journalists; and the targeting by law enforcement officials of vulnerable groups, in the context of counter-terrorism activities. The Committee has also expressed concerns related to the practice of requesting diplomatic assurances in cases of extradition that may expose individuals to the risk of torture or cruel, inhuman and degrading treatment or punishment in the requesting State. In such cases, the Committee has noted that the State party should recognize that the more systematic the practice of torture, the less likely it will be that a real risk of such treatment can be avoided by diplomatic assurances, however stringent any agreed follow-up procedure may be.[30]

37. The Human Rights Committee has continued to provide guidance through the development of relevant general comments, including its general comment No. 34 on article 19 of the International Covenant on Civil and Political Rights. With regard to counter-terrorism measures, the Committee has specified that States parties should ensure that these are compatible with article 19, paragraph 3, and that offences such as "encouragement of terrorism" and "extremist activity", as well as offences of "praising", "glorifying" or "justifying" terrorism, should be clearly defined to ensure that they do not lead to unnecessary or disproportionate interference with freedom of expression.[31] Excessive restrictions on access to information must also be avoided. The media play a crucial role in informing the public about acts of terrorism, and their capacity to operate should not be unduly restricted. In this regard, the Committee has noted that journalists should not be penalized for carrying out their legitimate activities.

38. The Committee against Torture has expressed concerns related to broad and vague definitions of terrorism in national legislation, as well as provisions for lengthy pretrial detention, a lack of provision to allow individuals to challenge the legality of their detention and a lack of adequate safeguards against the arbitrary arrest and detention of individuals accused of terrorist crimes. The Committee has expressed concerns over the use of special advocates; the use of administrative detention and immigration legislation to detain and remove non-citizens on the grounds of national security; the use of secret detention in the context of counter-

[30] CCPR/C/DEU/CO/6, para. 12.

[31] CCPR/C/GC/34, para. 46.

terrorism cooperation; the lack of effective, impartial and independent investigations into complicity in extraordinary renditions; and the lack of safeguards against the use of evidence obtained through torture.

39. The Committee on the Rights of the Child has addressed issues related to the impact of counter-terrorism legislation on children, including a lack of legal safeguards for children detained and charged under such legislation. The Committee on the Elimination of Racial Discrimination has raised concerns over the impact of counter-terrorism and other security legislation on certain groups, and has recommended that systems of terrorism prevention and investigation include safeguards against abuse and the deliberate targeting of certain ethnic and religious groups.[32]

III. Activities of the United Nations High Commissioner for Human Rights and her Office

40. In complement to the role of OHCHR as Chair of the Counter-Terrorism Implementation Task Force Working Group on Protecting Human Rights while Countering Terrorism, that Office has continued to address priority issues related to the protection of human rights and fundamental freedoms while countering terrorism and to make recommendations in this regard. For example, in her report to the Human Rights Council at its twenty-second session, the High Commissioner addressed in detail some of the challenges to due process and the right to a fair trial in the counter-terrorism context, noting certain good-practice recommendations highlighted during the series of expert regional symposiums organized by OHCHR as Chair of the Working Group, in collaboration with the Counter-Terrorism Implementation Task Force Office.

41. In her opening statement to the Human Rights Council at its twenty-third session, on 27 May 2013,[33] the High Commissioner underscored that the objective of the global struggle against terrorism was the defence of the rule of law and a society characterized by the values of freedom, equality, dignity and justice. She noted, however, that her Office had continued to receive allegations of grave violations of human rights that had taken place in the context of counter-terrorist and counter-insurgency operations. She drew attention to the failure to close the Guantanamo Bay detention centre as an example of the struggle against terrorism failing to uphold human rights, among them the right to a fair trial, and that the continuing indefinite detention of many of the detainees at Guantanamo amounted to arbitrary detention, in breach of international law. She encouraged relevant authorities to take steps towards the closure of the Guantanamo Bay detention centre and to ensure that all such measures were carried out in compliance with their obligations under international human rights law. In the meantime, every effort must be made to ensure full respect for the human rights of detainees, including those who choose to go on hunger strike.

42. The High Commissioner has also raised concerns over the continuing failure of many States to undertake public and independent investigations of past

[32] See CERD/C/GBR/CO/18-20.

[33] Available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13358&LangID=E.

involvement in renditions, in which terrorist suspects were captured and delivered to interrogation centres without regard for due process. She noted that the European Parliament had denounced obstacles that had been encountered by a number of parliamentary and judicial inquiries relating to this topic, and called on States to undertake credible and independent investigations as a priority first step towards accountability.

43. The High Commissioner has repeated her concerns, including in her statement to the Human Rights Council at its twenty-third session, over the human rights implications of the use of armed drones in the context of counter-terrorism and military operations, noting that the lack of transparency regarding such use had also contributed to a lack of clarity on the legal bases for drone strikes, as well as on safeguards to ensure compliance with the applicable international law. Moreover, the absence of transparency had created an accountability vacuum in which victims were unable to seek redress. The High Commissioner urged all States to be completely transparent regarding criteria for deploying drone strikes and to ensure that their use complies fully with relevant international law. Where violations occur, States should conduct independent, impartial, prompt and effective investigations, and provide victims with an effective remedy.

44. On 13 June 2013, the High Commissioner delivered opening remarks at the International Counter-Terrorism Focal Points Conference on Addressing Conditions Conducive to the Spread of Terrorism and Promoting Regional Cooperation, in Geneva, which was organized by the Counter-Terrorism Implementation Task Force Office in partnership with the Government of Switzerland.[34] In her statement, the High Commissioner underscored the need for a deeper appreciation of the linkages between a lack of respect for human rights and the conditions conducive to terrorism, alongside efforts to ensure effective human rights-compliant criminal justice responses to terrorism. She called for a redoubling of efforts to implement the Global Counter-Terrorism Strategy and encouraged States, as part of a holistic and effective counter-terrorism strategy, to include the ratification and implementation of all international human rights treaties. The High Commissioner highlighted the critical role of civil society in countering extremism, promoting dialogue, defending human rights and enhancing social cohesion. She encouraged States to create an enabling environment, including through the adoption of legislation protecting the space afforded to civil society organizations, and to enhance their engagement in the development and implementation of national and regional counter-terrorism strategies. With regard to the human rights of victims of terrorism, the High Commissioner underscored the importance of an acknowledgement of their losses and recognition, in practice, of their rights to reparation, truth and justice, and their right to live free of fear and with the support they require.

45. OHCHR has also continued to support initiatives towards the increased coherence of the Security Council sanctions regime with international human rights standards. The New York Office of the High Commissioner for Human Rights, in partnership with the Permanent Mission of Germany to the United Nations, organized a side event on 4 December 2012 on the topic "Targeted sanctions, human rights and due process: the future of the 1267/1989 Al-Qaida sanctions regime", in which the Chair and the Ombudsperson of the Security Council Committee pursuant

[34] Available from www.un.org/en/terrorism/ctitf/conference-geneva-june-2013.shtml.

to resolutions 1267 (1999) and 1989 (2011) concerning Al-Qaida and associated individuals and entities, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism[35] and two civil society representatives participated as panellists and the Assistant Secretary-General for Human Rights as moderator. The event was held with a view to informing the discussions around the due process-related aspects of the Security Council sanctions regime, as reflected in its resolutions 1989 (2011) and 2083 (2012). On 19 February 2013, OHCHR senior management met with the Ombudsperson of the Security Council Committee pursuant to resolutions 1267 (1999) and 1989 (2011) concerning Al-Qaida and associated individuals and entities in Geneva to discuss human rights issues of relevance to her mandate.

46. At the invitation of the Government of Tunisia, OHCHR participated in a seminar in Tunis on 30 and 31 May 2013, the purpose of which was to discuss a new draft anti-terrorism law for the country. That initiative reflected the commitment of the Government to ensuring that its counter-terrorism legislation is aligned with international human rights laws and standards, taking into account the recommendations issued by the former Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism.[36] OHCHR contributed human rights expertise and training to a national workshop on the topic "Human rights, fundamental freedoms and preventive criminal offences (recruitment for, training for, incitement to and glorification of terrorist acts)", organized by the United Nations Office on Drugs and Crime (UNODC) and held in Yemen from 9 to 12 June 2013, and to the development of a UNODC training module on human rights and criminal justice responses to terrorism.

47. At the invitation of OSCE, OHCHR contributed to a conference on strengthening regional cooperation, criminal justice institutions and rule of law capacities to prevent and combat terrorism and radicalization that leads to terrorism, held in Vienna on 12 and 13 November 2012. The aim of the conference was to encourage efforts and increase awareness and international capacity to uphold the rule of law, while protecting and promoting human rights within a counter-terrorism context, by instituting adequate criminal offences, criminal procedure tools and law enforcement capacities. OHCHR also took part in a peer review exercise on a draft OSCE guidebook on a community policing approach to preventing terrorism and countering violent extremism and radicalization that lead to terrorism.

48. OHCHR also continued to contribute to initiatives of GCTF, including by providing substantive and practical guidance for the drafting of good-practices memorandums.[37] For example, OHCHR participated in the third Coordinating Committee and Ministerial Plenary meeting of GCTF, in Abu Dhabi from 12 to 14 December 2012; meetings on supporting curriculum development for the International Institute of Justice and the Rule of Law, in Brussels on 10 and 11 April 2013[38] and in Geneva on 8 and 9 July 2013;[39] and a briefing to Member States by GCTF on its activities, in New York on 20 June 2013.

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[35] The report of the Special Rapporteur to the General Assembly (A/67/396) addresses this issue.

[36] See A/HRC/16/51/Add.2 and A/HRC/20/14/Add.1.

[37] See A/HRC/22/26.

[38] The meeting in Brussels was co-convened by the Center on Global Counterterrorism Cooperation, the Institute for Security Studies and the International Centre for Counter-Terrorism in The Hague.

IV. Conclusions and recommendations

49. Through the reaffirmation of the United Nations Global Counter-Terrorism Strategy, Member States have committed to an integrated and balanced implementation of all four pillars of the Strategy. In so doing, they have also reaffirmed their commitment to ensuring the promotion and protection of human rights and fundamental freedoms, as reflected in pillar IV, in the implementation of all pillars of the Strategy.

50. In this regard, Member States are encouraged to recognize the preventive aspects of counter-terrorism measures that are in compliance with human rights and rule of law, and to address the linkages between "measures to address the conditions conducive to the spread of terrorism", as reflected in pillar I of the Strategy, and "measures to ensure respect for human rights for all and the rule of law as the fundamental basis of the fight against terrorism", as reflected in pillar IV.

51. In line with their commitments under the Strategy, Member States should promote respect for and compliance with human rights and the rule of law as part of holistic and effective counter-terrorism strategies at the national and regional levels. The ratification and implementation of all international human rights treaties should form an integral part of such strategies.

52. Member States should give due attention to the recommendations on the promotion and protection of human rights in the counter-terrorism context made by the Human Rights Council under the universal periodic review process; in relevant special procedures mandates; by the United Nations human rights treaty bodies; and by the High Commissioner for Human Rights in her reports to the Human Rights Council.

53. The Counter-Terrorism Implementation Task Force and its entities, throughout their activities in support of the implementation of the Strategy, should promote respect for human rights and the rule of law as the fundamental basis of the fight against terrorism, and in particular ensure that such assistance is compliant with international human rights law.

54. Bearing in mind the critical role of civil society in countering extremism, promoting dialogue, defending human rights and enhancing social cohesion, Member States, as well as the Counter-Terrorism Implementation Task Force and its entities, should enhance their engagement with civil society and support its role in the implementation of the Strategy.

55. In their reports on progress made in the implementation of the Strategy, Member States, as well as the Counter-Terrorism Implementation Task Force and its entities, are encouraged to include information on measures they have taken to ensure respect for human rights for all and the rule of law as the fundamental basis of the fight against terrorism.

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[39] The meeting in Geneva was co-convened by the Center on Global Counterterrorism Cooperation and the Geneva Centre for Security Policy.